Supreme Court, U.S.
FILED

041539 MAY 16 2005

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Case No. 04-

In the Supreme Court of the United States

MATTHEW KATZ, *et al., Petitioners*
v.
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, Respondent

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On Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

Matthew Katz, Petitioner in *Pro Per*
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QUESTIONS PRESENTED

Ultimate Issue: Is there an affirmative ministerial duty to either process or reject papers appropriately filed with a federal court?

Mediate Issue: Was the decision of the United States Court of Appeals for the Ninth Circuit clearly erroneous when it refused to grant the Petitioner a Writ of Mandamus ordering United States District Judge Marilyn Patel to place a motion on her docket?

Underlying Issue: Whether District Judge Patel and/or her clerk violated their duty either to place a Motion for Substitution of Counsel appropriately filed with the court on the court's calendar or, on the other hand, to reject the Motion and return it to its maker?

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OPINIONS & ORDERS

Neither the Order of the United States Court of Appeals for the Ninth Circuit (case #04-76592), nor the decisions of the United States District Court for the Northern District of California (case #C-MDL-00-1369 MHP) are reported.

JURISDICTIONAL STATEMENT

The Order of the United States Court of Appeals for the Ninth Circuit was filed on 14 February 2005, from whence this appeal is taken (see App. "A"). The Supreme Court of the United States has jurisdiction to review this case pursuant to 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. 956

RELEVANT FACTS

On 24 July 2000, Petitioner Matthew Katz in *pro per* sued Napster, Inc. and several of its officers and directors, as well as the venture capital firm of Hummer Winblad, for copyright infringement (Case #C-00-4725 MHP) in the United States District Court for the Northern District of California. This case was later consolidated with other similar suits against Napster, Inc. (Consolidated Case # C-MDL-00-1369 MHP).

The individual Defendants moved to dismiss the Petitioner's Complaint for Failure to State a Claim for which Relief can be Granted (FRCP 12(b)6). On 9 July 2001, Judge Patel granted these motions without leave to amend on the ground that the individuals were too far removed from the infringement to be held liable, as the Ninth Circuit had previously held Napster not to have been the primary infringer A&M Records v. Napster 239 F.3d 1014. The Petitioner was unable to subsequently appeal this decision as Judge Patel refused to certify it per FRCP 54(b).

In his law and motion appearances, the Petitioner was repeatedly told by Judge Patell to get a lawyer. Seeing his attempts to represent himself repeatedly stymied, the Petitioner subsequently engaged counsel, *viz.*, a Mr. Sam Birenbaum, whom the Court substituted in as Petitioner's attorney of record, on 4 April 2002, though the papers submitted omitted a necessary order for Judge Patel's approval. The Court was apparently too happy to get rid of a *pro per* to pay attention to the formalities of procedure,

though later, when the shoe was on the other foot, formalities of procedure were all that mattered.

On 3 June 2002, Napster, Inc. sought Chapter 11 relief in the Bankruptcy Court of Delaware (Case #02-11573 PJW) and the copyright infringement case, then in the discovery phase, was stayed.

On 31 October 2003, the State Bar of California accepted the resignation of Sam Birenbaum, due to charges of misconduct relating to other clients. As a consequence, the Petitioner was left unrepresented in the underlying litigation.

At some point in time, subsequent to Mr. Birenbaum's disbarment, Judge Patel's clerk, Mr. Anthony Bowser, informed the Petitioner's employee, Mr. B. Harlan Field, that Judge Patel would not let the Petitioner be substituted back in as counsel in *pro per* (see App. "D"). There was no reason given other than the Judge's previously expressed wishes that the Petitioner be represented by someone other than himself.

On 30 June 2004, with Napster, Inc. still in Chapter 11 Reorganization, the Petitioner, anticipating his case would soon finally be ripe for appeal, sought leave (as he was represented by one who could no longer legally appear for him) to move to substitute himself back in as counsel in *pro per* (see App. "E"). The Petitioner, then unaware of the applicable Local Rule of Court 7.2(a) specifying thirty-five (35) days advance notice be given before a hearing on a motion is scheduled, gave the U.S. District Court for the

Northern District of California twenty-six (26) days notice, seeking to be heard on the Motion on 26 July 2004, a date and time prescribed by Judge Patel for the hearings on Law & Motion.

This Motion was never put on calendar, nor was it rejected by the Clerk of the District Court, nor did the Petitioner receive back the extra copy sent for conformation. Days before 26 June, Judge Patel's Clerk, Mr. Bowser, denied such a Motion was ever submitted, but informed the Petitioner's employee, Mr. Field, that they wished to receive five (5) weeks advance notice (see App. "D").

In the interim, Universal Music, Inc. and others had filed a new suit (case #C-04-1166 MHP *et alia*) against Hummer Winblad (one of the dismissed Defendants in the Petitioner's original Complaint) and others, alleging copyright infringement. These cases were also consolidated with the Napster, Inc. suit, but because Napster, Inc. was not a party to them, these actions were not subject to the automatic stay of the Delaware Bankruptcy Court. Hummer Winblad and the other Defendants in the Universal case moved to dismiss for Failure to State a Claim for which Relief could be Granted (FRCP 12(b)6), citing Judge Patel's 9 July 2001 ruling in the Petitioner's case as precedent.

On 14 July 2004, Judge Patel denied the Motions to Dismiss in the Universal Music case, thereby creating a contradictory precedent which the Petitioner felt would inure to his benefit, either in a Motion to Reconsider or in an Appeal. Judge Patel ruled that Universal Music and other

plaintiffs had alleged the exercise of (exclusive) control over Napster, Inc. by an active investor sufficient enough that it did not constitute demurrable error.[1]

On 18 August 2004, the Petitioner again sought leave of court to file a second Motion to Substitute himself back in as counsel in *pro per*, this time giving the Court five (5) weeks (but only thirty-three (33) days) notice prior to the requested hearing date of 20 September 2004, a date and time prescribed by Judge Patel for the hearings on Law & Motion (see App. "F"). Again, this Motion was neither calendarized nor rejected, nor did the Petitioner receive his extra copy sent for conformation. Again, Mr. Anthony Bowser, Judge Patel's clerk, denied to Mr. Field receipt of the Motion (see App. "D").

On 14 September 2004, the Petitioner filed a third request for leave of court to file a Motion to Substitute himself back in as counsel in *pro per* (see App. "G"). This time, the Petitioner checked all of the requirements thoroughly. He gave the court more than five (5) weeks notice. He gave the court forty-one (41) days notice for a hearing on 25 October 2004, a date and time prescribed by Judge Patel for the hearings on Law & Motion. Fooled twice before, this time the Petitioner sent this Motion with a signature confirmation option from the United States Post Office, bearing the tracking number 2301 3460 0000 2154 3899.

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[1] In light of this, the Petitioner feels he could amend his Complaint against Hummer Winblad, but not against the other Defendants.

According to the Track & Confirm option, the third Motion to Substitute was delivered to the United States District Court for the Northern District of California at 9:53 am Pacific Daylight Time on 16 September 2004 and signed for by a R. Martinez (see App. "H"). However, the extra copy sent for conformation was not returned, nor, at this juncture, were the Petitioner's (or his agent's) telephone calls to Judge Patel's chambers being returned.

For the third time, as the requested hearing date of 25 October neared, the Petitioner checked the online docket calendar and, for the third time, did not see his Motion on the calendar.

– Realizing that the District Court seemed to be deliberately losing his papers and denying knowledge of their whereabouts, on 25 October 2004, the same date the third hearing failed to take place, he again sought leave of court to file a fourth Motion to Substitute himself back in as counsel in *pro per*, this time giving forty-nine (49) days advance notice of a hearing set for 13 December 2004 (see App. "I"). This time he had a private company, *viz.*, One Legal, Inc., a firm specializing in filing court documents, file the fourth Motion to Substitute.

On 28 October 2004, Judge Patel issued an Order to Show Cause why the case(s) against Napster, Inc. should not be dismissed on 27 November 2004, presumably because the automatic stay of the Delaware Bankruptcy Court having been lifted and the Debtor therein discharged, as the

Petitioner received no notice from the Delaware court, though, up until that time, he had been receiving copies of filings and rulings in the bankruptcy case.

On 17 December 2004, Katz petitioned the United States District Court for the Ninth Circuit for a Writ of Mandamus ordering Judge Patel to put his Motion to Substitute Counsel on the docket and to deem it filed *nunc pro tunc* so that he could file his Notice of Appeal before the time to do so was expected to expire on 27 December 2004, thirty (30) days having elapsed since the case was dismissed (per FRAP #4). In his Petition, he stated that if his prayer for relief was not answered, he expected Judge Patel to dismiss the case and then declare his Motion to Substitute moot as the case to which it related was no longer active.

The Petitioner's prediction was not exactly perfect. Judge Patel waited until 8 February 2005 to dismiss the case (the delay working to deprive the Petitioner's Petition for Writ of Mandamus of the requisite irreparable harm), even though her Show Cause Order of 28 October had indicated otherwise (see App. "C"). On the very same day, *viz.*, 8 February, she did, as predicted, indeed deny the Katz Motion as moot (see App. "B"). It was not clear which Katz Motion she denied, the first, second, third or fourth. Assuming, *arguendo*, it was the fourth and last such motion, she waited three and one-half months to formalize a decision she had obviously made long before. Yet it was not until she belatedly denied the motion that the United States District Court for the Northern District of California even acknowledged that one had been filed. This would likely not

have even happened but for the filing of the Petition for the Writ.

Six days after these events, *viz.*, 14 February 2005, the United States Court of Appeals for the Ninth Circuit summarily denied the Petition for a Writ of Mandamus (see App. "A"), presumably because the delayed dismissal of the Napster case worked as Judge Patell had intended. The unexplained actions of District Judge, in delaying a ruling on a simple law and motion matter for months, and in delaying the dismissal of the case for weeks on end, were irregular and not in conformance with either the rules[2] or the orders[3] of the District Court, nor with general judicial practice. Substance was undermined by process.

JURISDICTION OF THE LOWER COURT

The United States Court of Appeals for the Ninth Circuit had jurisdiction of this Petition because it would have had jurisdiction over a final judgment in the underlying action below under 28 U.S.C. §1291. See Roche v. Evaporated Milk Ass'n 319 U.S. 21, 26, 63 S.Ct. 938, 87

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[2] Local Rule 7 prescribes a hearing date for law and motion at least 35 days after the filing of the motion. Prior to this, the motion is placed on the calendar. In the Petitioner's case, his motions were never placed on the calendar. Instead, Judge Patell's ruling came many weeks (or, if she was ruling on the prior motions, months) later without any hearing date.

[3] Judge Patel violated her own Order to Show Cause by not dismissing the Napster case at the time specified in the OSC (see App. "G"). There was no attempt by any party to show cause.

L.Ed 1185 (1943).

ARGUMENT

I. A UNITED STATES DISTRICT COURT HAS THE MINISTERIAL DUTY TO EITHER PROCESS MOTIONS PROPERLY FILED WITH ITS CLERK AND PLACE THEM ON THE DOCKET AND ON THE CALENDAR, OR, IF NOT PROPERLY FILED, TO REJECT THE MOTION AND RETURN IT TO ITS MAKER SO THAT IT MAY BE CORRECTLY FILED.

28 U.S.C. 956 is the only current statute dealing with the power and duties of clerks in the Federal courts.[4] However, it does not prescribe what those duties are, as it merely states "The clerk of each court and his deputies and assistants shall exercise the powers and perform the duties assigned to them by the court" *Id.* This language replaced earlier language in the United States Code of 1940 which stated that clerks were to perform the same duties as are exercised by the clerk of the Supreme Court *28 U.S.C. 221 (1940 ed.)* However, the duties of the clerk of the Supreme Court are not enumerated in the 1940 code. Nor are they detailed in the United States Code of 1927 (the code replaced by the 1940 code).

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[4] The Local Rules of the United States District Court for the Northern District of California do enumerate certain duties of the clerk not here relevant, as they relate to attorney discipline. These rules are common in Federal District Courts around the country (e.g, see the Local Rules for the District of Maine, page 57 (k), 1- 4, which contain the verbatim language used in California).

Rule 1 on page 1 of the current Rules of the Supreme Court of the United States describes the clerk's function, the receiving of documents submitted for filing, and also grants to the clerk the authority to reject documents not in conformance with the rules. But neither Rule 1 nor any other rule describes a duty of the clerk as to the filing of documents submitted for filing.

The Code of Federal Regulations (CFR) is equally silent as to these duties. Nor does the current code or its two predecessors contain any annotations to federal decisions on point. The Petitioner has uncovered no federal precedent regarding the general duties of the clerks of the United States Court to process papers offered for filing. Doubtless there exists written job description for the position of clerk, but wherever such a document as this exists, it is not in a format cognizable for the purpose of legal citation.

The annotations to current 28 U.S.C. 956 note that "Existing law does not prescribe the powers and duties of [District Court] clerks" *Historical and Statutory Notes.* The *Library References* in the U.S. Code does however contain a reference to *15 Am Jur 2d §25,* wherein it describes the official duty of the clerk of a court as to papers presented for filing in a cause before the court. A long list of state precedents is listed therein. However, no federal decision is referenced other than one instance when the United States Supreme Court denied *certiorari.*

The Federal Rules of Civil Procedure were amended

in 1991 to add Rule 5(e) which does state "The clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form." The Advisory Committee's comments on this amendment state that because of the risk of missing deadlines, only officers of the court and not clerks are to enforce rules of form *Id.*

The few annotations to FRCP 5(e) offer at best indirect guidance. Dielsi v. Falk 916 F.Supp. 985 (C.D.Cal. 1996) addressed a situation where the clerk refused to file a notice of removal because the caption on the notice did not match the caption on the complaint *Id.* at 989. The court ruled that the clerk was not empowered to reject a filing on a technical ground. In the case at bar, there was no rejection. Therefore, what is at issue is not the power of the clerk to reject a filing, but the duty of a clerk to accept a filing.

Of some interest is McClellon v. Lone Star Gas Co. 66 F.3d 98 (5th Cir. 1995) where a *pro se* plaintiff had her complaint returned (with instructions how to correct them) for failure to comply with FRCP 8 *Id.* at 100. When the plaintiff missed a short filing deadline, the appellate court ruled a *pro se* plaintiff should be liberally treated and given extra time (an indulgence never offered this Petitioner) *Id.* at 103. However, the ruling overturning the dismissal was grounded on the relation back doctrine of FRCP 15(c). The McClellon court added in footnote 1, "Our research has unearthed no federal case law adducing the applicability of rule 5(e) when the clerk of the court rejects pleadings that fail to conform with the pleading requirements of the Federal

Rules of Civil Procedure."

Where the federal law is silent on a procedural matter, state precedents may be persuasive authority, especially from states within the applicable Federal Circuit, and especially when there are no contrary opinions.

The clerks of a court have a duty to file all papers presented to them and to endorse the date of filing thereon Price v. Obayashi Hawaii Corp. 81 Haw. 171, 914 P.2d 1364. Here, the clerk refused to file a list of objections submitted in response to the clerk's notice of a proposed dismissal for want of prosecution *Id.* at 1367. The court held that a clerk must file all papers tendered within the proper time period *Id.* at 1372.

The duty to process papers presented for filing is not a discretionary function Rojas v. Cutsforth 67 Cal.App.4th 774, 79 Cal.Rptr.2d 292 (2d Dist. 1998). In Rojas, the clerk of the Superior Court of Ventura County, California rejected and returned to the plaintiff a complaint due to a missing signature and an error on the face of the summons. The statute of limitations expired before the error could be rectified. The California court held that the functions of the court clerk were purely ministerial *Id. At 777*. The clerk has no discretion to reject a complaint that is in substantial compliance with the local rules *Id.* See also Bernard v. Crowell 38 S.W.2d 912 (Tex. Civ. App. San Antonio 1931), holding also that a court clerk has no discretion in the duty to file papers recognized by law as belonging in the record of a legal cause of action.

There is an exception to the duty to file all papers submitted to a court observable in the common practice of most courts: They may and often do reject a paper offered for filing if it is deficient on its face, such as lacking a signature or omitting a filing fee. In such cases, the papers are returned to the party so that they may be filed properly. The practice of returning papers rejected for filing is common to all the cases cited in this Petition, even though it did not occur in the Petitioner's own cause. Logic compels this practice, for, unless the filing is rejected, a party would have no reason to know there was a problem until it is too late to correct whatever mistake was made (a concern noted in the 1991 amendments to the FRCP). The Rojas court noted this practice *Id.* at 777. However, substantive errors in the papers submitted are not included in this exception, as only a judge may rule thereon (see Ferlita v. State 380 So.2d 1118 [Fla. Dist. Ct. App. 2d Dist. 1980]). The clerk has no authority to pass on the validity of documents filed because the power to make decisions concerning the propriety of papers is vested with the court and not the clerk Bowman v. Eighth Judicial Dist. Court In and for Clark County 102 Nev. 474, 478, 728 P.2d 433 (1986).

In a second exception to the ministerial duty to process papers presented for filing, where there is a written ruling from the bench as to the propriety of a document later tendered to the clerk, the clerk may conform his actions to the order of the court Malinou v. McElroy 99 R.I. 277, 207 A.2d 44 (1965). It is not known in the cause before you whether the clerk of the United States District Court for the

Northern District of California was acting pursuant to an order from Judge Patel. Petitioner is aware of no such order. Nor is he aware of any facts which would bring either of the two exceptions into play.

It is the further responsibility of the clerk to keep a record of all documents submitted Sullivan v. Eighth Judicial Dist. Court In and for County of Clark 111 Nev. 1367, 904 P.2d 1039 (1995). In this case, a clerk refused to file papers to proceed in *forma pauperis*, but, unlike in the case at bar, the papers were returned to their proponent *Id. at 1370.*

In the case at bar, none of the Petitioner's Motions were returned to him. No communication was received from the District Court. When the Petitioner inquired about why he did not appear on the docket, the District Court pretended that the papers never were submitted, though there is evidence all four Motions were indeed submitted, evidence which grows more conclusive with time. Though the first two Motions are supported by an affidavit alone, the third is supported by the instrumentalities of the United States Post Office. The evidence on the fourth is *prima facie*, for the very stamp of the United States District Court appears on the top of the page.

Clearly, the clerks of the United States District Court for the Northern District of California, either acting on their own or at the command of Judge Patel, failed in exercising their ministerial duty, not once but four times.

II. THE DECISION OF THE UNITED STATES

COURT OF APPEALS WAS CLEARLY ERRONEOUS IN DENYING MANDAMUS RELIEF

A. The Petitioner has the clear right to access the courts in furtherance of Due Process, and to have his papers processed. The existence of such a right is an important federal question of law that is not at this time settled.

The Sullivan court stated that when a litigant is unable to have a court process his papers, his Constitutional right to Due Process was implicated *Id. at 1372.* Moreover, his right to access the courts in general was impeded by the actions of the clerk *Id.* A litigant has the clear right to both Due Process and accessibility to the courts to plead his causes.

Although a litigant also has the right to represent himself (see Faretta v. California 422 U.S. 806 (1975)), Judge Patell told the Petitioner at a hearing held on 10 April 2001 that he should get a lawyer, and, at a status conference in November of that year acted in ways not helpful to the Petitioner (refusing to modify the volume of the proceedings and telling the Petitioner "to get a hearing aid"). Her attitude only changed when the Petitioner engaged counsel. However, when that counsel of record was no longer available, Judge Patel made it clear through her clerk that she would not allow the Petitioner back in on a *pro per* basis (see App. "D"). Judge Patel's stance was in clear violation of the rights of this Petitioner.

The Rojas court went on to say that "It is difficult

enough to practice law without having the clerk's office as an adversary" *Id. at 777* . In the case at bar, the clerk of the District Court, acting with or without the direction of Judge Patel, did not even have the courtesy to reject the Petitioner's papers. It ignored the fact they were even presented for filing. Moreover, they did it not once, but four (4) times. This goes well beyond making the court an adversary.

The United States District Court for the Northern District of California offers on its web-site a "*Pro Se* Handbook," but, in the chambers of the (now former) chief judge of that court, they are evidently unfamiliar with it. When the situation was reversed and the Petitioner's papers substituting himself out lacked a necessary document, Judge Patel and/or her clerk had no trouble finding the motion and approving it.

In all this, the clear rights of this Petitioner have been violated. He failed in his appeal to the intermediate court. He now appeals to this, the highest court in the land, to vindicate what is left of his rights.

B. Due to the clear breach of a ministerial duty, and the clear right of the Petitioner, the appropriate remedy for a court's failure to process papers presented for filing is Mandamus.

In the ancient common law Writ of Mandamus and its modern statutory descendants lies the proper remedy to compel the clerk of the court to perform a ministerial act, such as the filing of papers presented to the court Burnham

v. Clerk of First Dist. Court of Essex 352 Mass 466, 226 N.E.2d 190 (1967).

Burnham is on point. As in the case at bar, a *pro se* plaintiff loses his case and then is stymied when the clerk of the Massachusetts court refuses to process his Motion for a New Trial *Id. at 191*. None of the exceptions to the ministerial duty of the clerk heretofore noted were alleged. When Mr. Burnham attempted to have his motion heard in court (likely because the time in which to do so was expiring), the judge refused because it hadn't been filed with the clerk *Id.* Pursuant to the then Massachusetts law, he also attempted to file another motion to force the clerk to file the Motion for a New Trial *Id.* The clerk also refused to process this motion *Id.* Again, none of the exceptions to the ministerial duty of the clerk heretofore noted were alleged.

The Massachusetts appellate court not only issued to Mr. Burnham a Writ of Mandamus, it also ordered that his Motion for a New Trial be deemed filed *nunc pro tunc Id.* The necessity for the latter variant being that by the time Mr. Burnham overturned the inaction of the trial court, the time had expired for him to file the Motion for a New Trial. The expiration of time was due to the inaction of the court and not due to any negligence on the part of Mr. Burnham.

In the matter before you, a veritable *pro se* plaintiff was refused his right to file a motion properly before the court. The record in the Burnham case does not reveal what posture the trial court took in justifying its inaction. At the time of filing the Petition for a Writ of Mandamus, the

United States District Court in question had indicated its posture – it would deny these motions were ever filed.

Lastly, as in Burnham, the Ninth Circuit was asked not to countenance the Petitioner suffering the expiration of time in which to make his motion (and the subsequent Notice of Appeal) due to the actions of the trial court. In order to insure that such a result did not obtain, the Ninth Circuit should have deemed such a substitution filed and approved, and, if necessary, his Notice of Appeal filed *nunc pro tunc.*

Instead, the Ninth Circuit seems to have relied on the machinations of the District Court in delaying the dismissal long enough to **appear** to deprive the Petitioner of the inadequate remedy and the irreparable injury needed to prevail on the Writ. When the matter was ready for decision at the appellate level, the illusion of the presence of remedy and the absence of harm was no longer required. Days before the Ninth Circuit issued its ruling, the inadequate remedy and the irreparable harm the Petitioner was prevented from demonstrating came back into view, though it had always been present.

C. The United States Court of Appeals Should have Granted the Petition for a Writ of Mandamus

The Ninth Circuit based its decision denying the Writ of Mandamus on Bauman v. U.S. District Court 557 F.2d. 650, 654-655 (Ninth Cir. 1977). Bauman set forth five (5) factors to be balanced in considering the issuance of Mandamus in a civil case, *viz.*, (1) There is no adequate

remedy by appeal or otherwise; (2) The Petitioner will be damaged irreparably as the damage cannot be later cured on appeal; (3) The District Court's action is clearly erroneous; (4) The issue is likely to recur because the problem is capable of repetition and may evade appellate review; and (5) The challenged action raises issues that are new and important or of first impression.

A review of the five (5) Bauman factors shows that, on balance, this Petitioner definitely comes within the very narrow set of circumstances where this extraordinary relief is warranted, and to decide otherwise was clearly erroneous.

There was no other adequate remedy at law or in equity that would have enabled the Petitioner to preserve his right to appeal. This Petitioner was deliberately placed in a legal no man's land where he had to remain mute as there was no valid counsel of record to speak for him and the District Court had for six (6) months steadfastly refused to even acknowledge the four (4) Motions to Substitute Counsel were even filed (Bauman factor #1), until the Court was ready to declare it/them moot. Even if the District Court were to have heard his last Motion, Judge Patel could have (as she in fact later did) rule it moot as the case it related to was scheduled to have been previously dismissed and the Petitioner never showed cause why it should not have been dismissed. Of course, the Petitioner couldn't have shown cause during the time allotted to do so as he was then officially a stranger to the court and he could speak only through a counsel of record who was not permitted to appear... Under these circumstances, this Petitioner has

discharged the burden of showing that an appeal is not available, a burden noted in Bauman *at 656*.

But for this "Catch-22," the Petitioner would have responded to the 28 October 2004 Order to Show Cause why his case should not be dismissed as he was desirous of moving to reconsider the 9 July 2001 order dismissing the individual Defendants in light of the later 14 July 2004 ruling. At the time he petitioned for Mandamus, he had already suffered harm in that he could not have moved for reconsideration. He was at that time also likely to suffer more harm if he could not have appealed for the same reason (Bauman factor #2). Unlike Bauman *at 658*, the Petitioner was not using the Writ as a substitute for an appeal.

The Petitioner would be irreparably damaged if the Writ was not issued for he would then have lost his right to appeal the ruling granting the Defendants' their Motion to Dismiss with Prejudice. The time to file such an appeal was scheduled to expire on 27 December last. Only this extraordinary remedy would have allowed him to file the appropriate Notice of Appeal. The scheduled dismissal should have governed the decision of the Ninth Circuit, rather than the artificial and unwarranted delay imposed for transparent reasons.

The inaction of the District Court was clearly erroneous because the District Court has a ministerial duty as to papers filed with it: To accept them and docket them or to reject and return them. Only a kangaroo court or an East German tribunal is allowed to pretend over and over again

they never received them. If this were not so, any right provided by our Constitution or by statute or legal precedent could be easily undermined by the whims of a court, as they would be denied not by a reasoned decision based on law and precedent, but denied by the subterfuge that the papers were never received. That there are no contrary precedents as to the duty of the courts in these matters demonstrates the actions (or inactions) of the United States District Court for the Northern District of California were clearly erroneous (Bauman factor #3).

The dilemma of this Petitioner was capable of being repeated in the underlying matter (though not if the Writ of Mandamus did not issue, for then this matter would have been adjudicated) as Judge Patel has expressed her intention not to allow the Petitioner to return to *pro per* status. That this situation may evade appellate review is inherent in the facts: if a party represented by a counsel no longer qualified to appear cannot change counsel before the time to appeal expires, *ipso facto*, appellate review has been successfully evaded by definition (Bauman factor #4).

The applicable precedents, though mostly emanating from the state courts are clear. The absence of a federal precedent regarding the duty of the clerks of the court to either accept or reject papers submitted for filing demonstrates the newness of the issue. As for its importance, a legal party's rights, claims and defenses must always stand or fall on their merits, rather than on the whim of civil servants (Bauman factor #5).

Not only did his Petition for Mandamus satisfy the modern requirements for Mandamus to issue, it also met the stricter common law requirements of a violation of a ministerial duty by the Respondent and a clear legal right of the Petitioner.

D. The Court Of Appeals Decision Denying Mandamus Was Clearly Erroneous

In assessing the inadequacy of the remedy and irreparability of the injury, the fact that the case had technically not been dismissed when the Ninth Circuit entertained the Petition should not have mattered so much as the fact that it was scheduled to be dismissed, and that a provisional order of dismissal already had been tendered.

By the time the Ninth Circuit's decision was handed down, the case had indeed been dismissed and the Petitioner's Motion to Substitute had indeed been ruled moot, exactly as the Mandamus Petition had alleged. The Ninth Circuit, therefore, based its decision on a technicality that existed only temporarily, on a technicality that was not in accordance with the rules or orders of the issuing court, and on a technicality created for no other purpose than to procure the result of yet another denial of the rights of the Petitioner.

CONCLUSION

Motions of litigants, like orders and rules of court, are not meant to be tools of pretense as they were in this case. The

inaction of the District Court denied the Petitioner Due Process and his right of self-representation. The Ninth Circuit could not see through the manipulations that the District Court interjected into the process. It remains for this Court to vindicate the rights of litigants to have their causes heard, rather than fall prey to those who, under color of judicial authority, would both use and violate procedural rules in order to silence their complaints on grounds neither procedural nor substantive.

WHEREFORE, the Petitioner prays that Certiorari now issue against the Order of the United States Court of Appeal for the Ninth Circuit.

Dated, this 9th day of May 2005 at Malibu, Calif.

_____

Matthew Katz, Petitioner in *Pro Per*

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: MATTHEW KATZ. --- MATTHEW KATZ, Petitioner, v. UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, Respondent, HUMMER WINBLAD, Real Party in Interest	No. 04-76592 D.C. No. CV-00-01369-MHP Northern District of California, San Francisco ORDER (Filed Feb. 14, 2005)

Before: FERNANDEZ, GRABER and GOULD, Circuit Judges

Petitioner has not demonstrated that this case warrants the intervention of this court by means of the extraordinary remedy of mandamus. *See Bauman v. United States Dist. Court*, 557 F.2d 650 (9th Cir. 1977). Accordingly, the petition is denied.

APPENDIX B

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE NAPSTER, INC. COPYRIGHT LITIGATION

No. C MDL-00-1369 MHP

ORDER

/ (Filed Feb. 9, 2005)

On October 29, 2004, this court issued an order to show cause why the following actions should not be dismissed without prejudice as to defendant Napster, Inc.:

A&M Records, Inc. et al. v. Napster, Inc., No. C 99-5183 MHP

Leiber et al. v. Napster, Inc. et al., No. C 00-0074 MHP

Katz v. Napster, Inc. et al., No. C 00-4725 MHP

National Academy of Recording Arts & Sciences v. Napster, Inc., No. C 01-0926 MHP

Emusic.com, Inc. v. Napster, Inc., No. C 01-0939 MHP

Platinum Entertainment, Inc. et al. v. Napster, Inc., No. C 01-1412 MHP

Radio Spirits, Inc. v. Napster, Inc., No. C 01-2090 MHP

Fonovisa, Inc. v. Napster, Inc., No. C 01-2669 MHP

Rawkus Entertainment, LLC v. Napster, Inc., No. C 01-3234 MHP

Having failed to receive any response to the order to show cause, the court hereby orders that each of the actions listed above be DISMISSED WITHOUT PREJUDICE.

IT IS SO ORDERED.

Date: Feb. 8, 2005 /s/ Marilyn Hall Patel
MARILYN HALL PATEL
District Judge
United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE NAPSTER, INC. COPYRIGHT LITIGATION

No. C MDL-00-1369 MHP

JUDGMENT

/ (Filed Feb. 9, 2005)

It is hereby ORDERED AND ADJUDGED that the [sic] each of the following actions be DISMISSED WITHOUT PREJUDICE:

A&M Records, Inc. et al. v. Napster, Inc., No. C 99-5183 MHP

Leiber et al. v. Napster, Inc. et al., No. C 00-0074 MHP

Katz v. Napster, Inc. et al., No. C 00-4725 MHP

National Academy of Recording Arts & Sciences v. Napster, Inc., No. C 01-0926 MHP

Emusic.com, Inc. v. Napster, Inc., No. C 01-0939 MHP

Platinum Entertainment, Inc. et al. v. Napster, Inc., No. C 01-1412 MHP

Radio Spirits, Inc. v. Napster, Inc., No. C 01-2090 MHP

Fonovisa, Inc. v. Napster, Inc., No. C 01-2669 MHP

Rawkus Entertainment, LLC v. Napster, Inc., No. C 01-3234 MHP

IT IS SO ORDERED.

Date: Feb. 8, 2005 /s/ Marilyn Hall Patel
MARILYN HALL PATEL
District Judge
United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE NAPSTER, INC.
COPYRIGHT LITIGATION

MATTHEW KATZ,

Plaintiff,

v.

NAPSTER, INC. et al.,

Defendants. /

No. C MDL-00-1369 MHP
(No. C 00-4725 MHP)

ORDER

(Filed Feb. 9, 2005)

Having dismissed the above-captioned action as to all defendants, plaintiff Matthew Katz's motion to substitute the attorney of record in this action is hereby DENIED as moot.

IT IS SO ORDERED.

Date: Feb. 8, 2005 /s/ Marilyn Hall Patel
MARILYN HALL PATEL
District Judge
United States District Court
Northern District of California

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE NAPSTER, INC. COPYRIGHT LITIGATION	No. C MDL-00-1369 MHP ~~[PROPOSED]~~ **ORDER TO SHOW CAUSE** (Filed Oct. 29, 2004) Date: N/A Time: N/A Ctrm: Hon. Marilyn Hall Patel

It is hereby ORDERED that all parties in the following actions pending in the consolidated *In re Napster, Inc. Copyright Litigation* action, No. C-MDL-00-1369 MHP, who have any reason as to why these actions should not be dismissed without prejudice as to defendant Napster, Inc. shall show cause in writing within 30 days of the date this Order is signed:

A&M Records, Inc. et al. v. *Napster, Inc.*, No. C 99-5183 MHP

Leiber et al. v. *Napster, Inc. et al.*, No. C 00-0074 MHP

Katz et al. v. *Napster, Inc. et al.*, No. C 00-4725 MHP

National Academy of Recording Arts & Sciences v. *Napster, Inc. et al.*, No. C 01-0926 MHP

Emusic.com, Inc. v. *Napster, Inc.*, No. C 01-0939 MHP

Platinum Entertainment, Inc. et al. v. *Napster, Inc. et al.*, No. C 01-1412 MHP

Radio Spirits, Inc. v. *Napster, Inc.*, No. C 01-2090 MHP

Fonovisa, Inc. v. *Napster, Inc.*, No. C 01-2669 MHP

Rawkus Entertainment, LLC v. *Napster, Inc. et al.*, No. C 01-3234 MHP

This order does not apply to and shall not affect the following actions which are currently pending:

UMG Recordings, Inc., et al. v. *Bertelsmann AG, et al.*, No. C 04-1351 MHP

Leiber, et al. v. *Bertelsmann AG, et al.*, No. C 04-1671 MHP

Capitol Records, Inc., et al. v. *Bertelsmann AG, et al.*, No. C 04-2121 MHP

Bridgeport Music, Inc., et al. v. *Bertelsmann AG, et al.*, No. C 04-2149 MHP

UMG Recordings, Inc. et al. v. *Hummer Winblad Venture Partners, et al.*, No. C 04-1166 MHP

Bridgeport Music, Inc., et al. v. *Hummer Winblad Venture Partners, et al.*, No. C 04-3004 MHP

IT IS SO ORDERED.

Date: Oct. 28, 2004 /s/ Marilyn Hall Patel
Marilyn Hall Patel
United States District Court

APPENDIX D

AFFIDAVIT OF B. HARLAN FIELD

I, B. Harlan Field, swear under penalty of perjury under the laws of the United States of America and the State of California that the following is true and correct:

I am employed as a paralegal by Matthew Katz. Sometime after Mr. Katz's counsel of record in the Napster case was disbarred, I had a conversation with Mr. Anthony Bowser, the clerk for Judge Marilyn Patel. During this conversation, Mr. Bowser informed me that Judge Patel would not allow Matthew Katz to return to pro per status. No reason was given to me for this position. Nevertheless, I then attempted the first of four motions to substitute Mr. Katz back into the Napster case. Mr. Bowser would later disclaim any knowledge of the first and then the second motions to substitute. After these incidents, I attempted to communicate with Mr. Bowser or anyone else in Judge Patell's [sic] chambers, but I was not able to get my phone calls returned.

I again state that the information contained in the four proofs of service signed by me and attached as exhibits were true and correct, viz., that on 30 June 2004, 18 August 2004, 14 September 2004 and 11 November 2004 I did mail the Motion to Substitute Counsel as indicated in the four proofs of service.

I again swear under the laws of the United States of America and the state of California that the foregoing is true and correct.

/s/ B. Harlan Field
B. Harlan Field, Affiant

STATE OF California
COUNTY OF LOS ANGELES

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 16 DAY OF Dec, 2004, BY B. Harlan Field
Susan M. Smith-Wooden
NOTARY PUBLIC

[SEAL] SUSAN M. SMITH-WOODEN
Commission # 1528654
Notary Public – California
Ventura County
My Comm. Expires Nov 21, 2008

APPENDIX E

Matthew Katz, Plaintiff
29903 Harvester Road
Malibu, CA 90265
(310) 457-4844

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF CALIFORNIA

IN RE NAPSTER, INC. COPYRIGHT LITIGATION MATTHEW KATZ (d.b.a. SAN FRANCISCO SOUND, AFTER YOU PUBLISHING CO., MALIBU RECORDS, MATTHEW KATZ PRODUCTIONS), Plaintiff, v. NAPSTER, INC., et alia, Defendants.	No. MDL-00-1369 MHP No. C-00-4725 MHP **MOTION TO SUBSTITUTE AND (PROPOSED) ORDER GRANTING SUBSTITUTION OF ATTORNEY** Date: 26 July 2004, 2 p.m. Hon. Marilyn Hall Patel

Plaintiff Matthew Katz seeks Leave of court to move, pursuant to Local Rule of Court 11-5, to substitute himself back in as pro per in the above entitled action due to the fact that his attorney of record, Sam Birenbaum, California State Bar #059147, may no longer practice law in California (see attached Certificate of Good Standing from the State Bar of California). This Motion, therefore, is

based upon operation of law as there is presently no valid counsel of record for this Plaintiff.

Dated: 30 June 2004 /s/ M Katz
Plaintiff Matthew Katz

[LOGO] THE STATE BAR OF CALIFORNIA

180 HOWARD STREET
SAN FRANCISCO, CALIFORNIA
94105-1639
TELEPHONE (415) 538-2000

April 26, 2004

TO WHOM IT MAY CONCERN:

This is to certify that according to the records of the State Bar, SAM BIRENBAUM was admitted to the practice of law in this state by the Supreme Court of California on June 18, 1974; that the public record states that information has been provided pursuant to Business and Professions Code section 6086.1(c); that from the date of admission to June 6, 2002, he was an ACTIVE member of the State Bar of California; that on June 6, 2002, he was enrolled as an INACTIVE member of the State Bar of California; that on June 7, 2002, a notice to show cause directed to the member was issued to commence formal disciplinary proceedings and hearings; that on February 17, 2003, there was an interim suspension after conviction; that on August 15, 2003, he was enrolled as an INACTIVE member of the State Bar of California; that on October 31, 2003 the Supreme Court of California accepted his resignation as a member of the State Bar without prejudice to further proceedings in any disciplinary matter pending against him should he hereafter seek reinstatement; and

that from that date to date hereof, he has not been a member of the State Bar of California nor authorized to practice law in California.

THE STATE BAR OF CALIFORNIA

/s/ WNS
Waffa N. Salfiti
Senior Administrative Supervisor
Office of Certification

Matthew Katz
Bar #059147
29903 Harvester Road
Malibu, CA 90265
(310) 457-4844

Attorney for Plaintiff Matthew Katz

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF CALIFORNIA

IN RE NAPSTER, INC. COPYRIGHT LITIGATION	No. MDL-00-1369 MHP
MATTHEW KATZ (d.b.a. SAN FRANCISCO SOUND, AFTER YOU PUBLISHING CO., MALIBU RECORDS, MATTHEW KATZ PRODUCTIONS), Plaintiff, v. NAPSTER, INC., et alia, Defendants.	No. C-00-4725 MHP **(PROPOSED) ORDER GRANTING SUBSTITUTION OF ATTORNEY**

The requested Leave to make the Motion being granted, the Motion of Plaintiff Matthew Katz to substitute himself back as Pro Per in the above entitled action is HEREBY GRANTED. All papers filed by the Plaintiff shall indicate his appearance in *pro per*.

Dated: _____

_____
Hon. Marilyn Hall Patel,
U.S. District Judge

APPENDIX F

Matthew Katz, Plaintiff
29903 Harvester Road
Malibu, CA 90265
(310) 457-4844

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF CALIFORNIA

IN RE NAPSTER, INC. COPYRIGHT LITIGATION	
MATTHEW KATZ (d.b.a. SAN FRANCISCO SOUND, AFTER YOU PUBLISHING CO., MALIBU RECORDS, MATTHEW KATZ PRODUCTIONS), Plaintiff, v. NAPSTER, INC., et alia, Defendants.	No. MDL-00-1369 MHP No. C-00-4725 MHP **MOTION TO SUBSTITUTE AND (PROPOSED) ORDER GRANTING SUBSTITUTION OF ATTORNEY** Date: 20 September 2004, 2 p.m. Hon. Marilyn Hall Patel

Plaintiff Matthew Katz seeks Leave of court to move, pursuant to Local Rule of Court 11-5, to substitute himself back in as pro per in the above entitled action due to the fact that his attorney of record, Sam Birenbaum, California State Bar #059147, may no longer practice law in California (see attached Certificate of Good Standing from the State Bar of California). This Motion, therefore, is based upon operation of law as there is presently no valid counsel of record for this Plaintiff.

Dated: 18 August 2004

Plaintiff Matthew Katz

[SEAL] THE STATE BAR OF CALIFORNIA

180 HOWARD STREET
SAN FRANCISCO,
CALIFORNIA 94105-1639
TELEPHONE (415) 538-2000

April 26, 2004

TO WHOM IT MAY CONCERN:

This is to certify that according to the records of the State Bar, SAM BIRENBAUM was admitted to the practice of law in this state by the Supreme Court of California on June 18, 1974; that the public record states that information has been provided pursuant to Business and Professions Code section 6086.1(c); that from the date of admission to June 6, 2002, he was an ACTIVE member of the State Bar of California; that on June 6, 2002, he was enrolled as an INACTIVE member of the State Bar of California; that on June 7, 2002, a notice to show cause directed to the member was issued to commence formal disciplinary proceedings and hearings; that on February 17, 2003, there was an interim suspension after conviction; that on August 15, 2003, he was enrolled as an INACTIVE member of the State Bar of California; that on October 31, 2003 the Supreme Court of California accepted his resignation as a member of the State Bar without prejudice to further proceedings in any disciplinary matter pending against him should he hereafter seek reinstatement; and that from that date to date hereof, he has not been a

member of the State Bar of California nor authorized to practice law in California.

THE STATE BAR OF CALIFORNIA
/s/ [Illegible]
Waffa N. Salfiti
Senior Administrative Supervisor
Office of Certification

Matthew Katz, Plaintiff
Bar #059147
29903 Harvester Road
Malibu, CA 90265
(310) 457-4844

Attorney for Plaintiff Matthew Katz

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF CALIFORNIA

IN RE NAPSTER, INC. COPYRIGHT LITIGATION	
MATTHEW KATZ (d.b.a. SAN FRANCISCO SOUND, AFTER YOU PUBLISHING CO., MALIBU RECORDS, MATTHEW KATZ PRODUCTIONS), Plaintiff, v. NAPSTER, INC., et alia, Defendants.	No. MDL-00-1369 MHP No. C-00-4725 MHP **(PROPOSED) ORDER GRANTING SUBSTITUTION OF ATTORNEY**

The requested Leave to make the Motion being granted, the Motion of Plaintiff Matthew Katz to substitute himself back as Pro Per in the above entitled action is HEREBY GRANTED. All papers filed by the Plaintiff shall indicate his appearance in *pro per*.

Dated: _____

_____
Hon. Marilyn Hall Patel,
U.S. District Judge

APPENDIX G

Matthew Katz, Plaintiff
29903 Harvester Road
Malibu, CA 90265
(310) 457-4844

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF CALIFORNIA

IN RE NAPSTER, INC. COPYRIGHT LITIGATION	
MATTHEW KATZ (d.b.a. SAN FRANCISCO SOUND, AFTER YOU PUBLISHING CO., MALIBU RECORDS, MATTHEW KATZ PRODUCTIONS), Plaintiff, v. NAPSTER, INC., et alia, Defendants.	No. MDL-00-1369 MHP No. C-00-4725 MHP **MOTION TO SUBSTITUTE AND (PROPOSED) ORDER GRANTING SUBSTITUTION OF ATTORNEY** Date: 25 October 2004, 2 p.m. Hon. Marilyn Hall Patel

Plaintiff Matthew Katz seeks Leave of court to move, pursuant to Local Rule of Court 11-5, to substitute himself back in as pro per in the above entitled action due to the fact that his attorney of record, Sam Birenbaum, California State Bar #059147, may no longer practice law in California (see attached Certificate of Good Standing from the State Bar of California). This Motion, therefore, is based upon operation of law as there is presently no valid counsel of record for this Plaintiff.

Dated: 14 September 2004 M Katz
Plaintiff Matthew Katz

[SEAL] THE STATE BAR OF CALIFORNIA

180 HOWARD STREET
SAN FRANCISCO,
CALIFORNIA 94105-1639
TELEPHONE (415) 538-2000

April 26, 2004

TO WHOM IT MAY CONCERN:

This is to certify that according to the records of the State Bar, SAM BIRENBAUM was admitted to the practice of law in this state by the Supreme Court of California on June 18, 1974; that the public record states that information has been provided pursuant to Business and Professions Code section 6086.1(c); that from the date of admission to June 6, 2002, he was an ACTIVE member of the State Bar of California; that on June 6, 2002, he was enrolled as an INACTIVE member of the State Bar of California; that on June 7, 2002, a notice to show cause directed to the member was issued to commence formal disciplinary proceedings and hearings; that on February 17, 2003, there was an interim suspension after conviction; that on August 15, 2003, he was enrolled as an INACTIVE member of the State Bar of California; that on October 31, 2003 the Supreme Court of California accepted his resignation as a member of the State Bar without prejudice to further proceedings in any disciplinary matter pending against him should he hereafter seek reinstatement; and that from that date to date hereof, he has not been a

member of the State Bar of California nor authorized to practice law in California.

THE STATE BAR OF CALIFORNIA

/s/ WNS
Waffa N. Salfiti
Senior Administrative Supervisor
Office of Certification

Matthew Katz, Plaintiff
Bar #059144
29903 Harvester Road
Malibu, CA 90265
(310) 457-4844

Attorney for Plaintiff Matthew Katz

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF CALIFORNIA

IN RE NAPSTER, INC. COPYRIGHT LITIGATION	
MATTHEW KATZ (d.b.a. SAN FRANCISCO SOUND, AFTER YOU PUBLISHING CO., MALIBU RECORDS, MATTHEW KATZ PRODUCTIONS), Plaintiff,	No. MDL-00-1369 MHP No. C-00-4725 MHP **(PROPOSED) ORDER GRANTING SUBSTITUTION OF ATTORNEY**
v.	
NAPSTER, INC., et alia, Defendants.	

The requested Leave to make the Motion being granted, the Motion of Plaintiff Matthew Katz to substitute himself back as Pro Per in the above entitled action is HEREBY GRANTED. All papers filed by the Plaintiff shall indicate his appearance in *pro per*.

Dated: _____

_____
Hon. Marilyn Hall Patel,
U.S. District Judge

Postage and Signature Confirmation fees must be paid before mailing.
Clerk, United States District
450 Golden Gate Ave
San Francisco, CA 94102
Waiver of Signature ☐ YES ☐ NO
SIGNATURE CONFIRMATION NUMBER:
2301 3460 0000 2154 3897
USPS
Postmark Here
SEP 14 2004
MALIBU CA POINT DUME STA
POSTAL CUSTOMER:
Keep this receipt. For Inquiries:
Access internet web site at
www.usps.com
or call 1-800-222-1811
☒ Priority Mail®
☐ Package Services

APPENDIX H

[LOGO] **UNITED STATES POSTAL SERVICE®**

Track & Confirm

Shipment Details

You entered 2301 3460 0000 2154 3899

Your item was delivered at 9:53 am on September 16, 2004 in SAN FRANCISCO, CA 94102. The item was signed for by R MARTINEZ.

Here is what happened earlier:

- ENROUTE, September 16, 2004, 5:48 am, SAN FRANCISCO, CA 94102
- ENROUTE, September 16, 2004, 1:00 am, SAN FRANCISCO, CA 94188
- ACCEPTANCE, September 14, 2004, 2:15 pm, MALIBU, CA 90265

Notification Options

- **Track & Confirm by email** **What is this?**
- **Request Proof of Delivery** **What is this?**

POSTAL INSPECTORS
Preserving the Trust

APPENDIX I

Matthew Katz, Plaintiff
29903 Harvester Road
Malibu, CA 90265
(310) 457-4844

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF CALIFORNIA

IN RE NAPSTER, INC. COPYRIGHT LITIGATION	) No. MDL-00-1369 MHP
MATTHEW KATZ (d.b.a. SAN FRANCISCO SOUND, AFTER YOU PUBLISHING CO., MALIBU RECORDS, MATHEW KATZ PRODUCTIONS),	) No. C-00-4725 MHP
Plaintiff,	) **MOTION TO SUBSTITUTE AND (PROPOSED) ORDER GRANTING SUBSTITUTION OF ATTORNEY**
v.	) (Filed Oct. 27, 2004)
NAPSTER, INC., et alia,	) Date: 13 December 2004, 2 p.m.
Defendants.	) Hon. Marilyn Hall Patel

Plaintiff Matthew Katz seeks Leave of court to move, pursuant to Local Rule of court 11-5, to substitute himself back in as pro per in the above entitled action due to the fact that his attorney of record, Sam Birenbaum, California State Bar #059147, may no longer practice law in California (see attached Certificate of Good Standing from the State Bar of California). This Motion, therefore, is based upon operation of law as

there is presently no valid counsel of record for this Plaintiff.

Dated: 25 October 2004 /s/ Matthew Katz
Plaintiff Matthew Katz

[LOGO] THE STATE BAR OF CALIFORNIA
180 HOWARD STREET
SAN FRANCISCO, CALIFORNIA 94105-1639
TELEPHONE (415) 538-2000

April 26, 2004

TO WHOM IT MAY CONCERN:

This is to certify that according to the records of the State Bar, SAM BIRENBAUM was admitted to the practice of law in this state by the Supreme court of California on June 18, 1974; that the public record states that information has been provided pursuant to Business and Professions Code section 6086.1(c); that from the date of admission to June 6, 2002, he was an ACTIVE member of the State Bar of California; that on June 6, 2002, he was enrolled as an INACTIVE member of the State Bar of California; that on June 7, 2002, a notice to show cause directed to the member was issued to commence formal disciplinary proceedings and hearings; that on February 17, 2003, there was an interim suspension after conviction; that on August 15, 2003, he was enrolled as an INACTIVE member of the State Bar of California; that on October 31, 2003 the Supreme Court of California accepted his resignation as a member of the State Bar without prejudice to further proceedings in any disciplinary matter pending against him should he hereafter seek reinstatement; and that from that date to date hereof; he has not been a

member of the State Bar of California nor authorized to practice law in California.

THE STATE BAR OF CALIFORNIA

/s/ wns

Waffa N. Salfiti
Senior Administrative Supervisor
Office of Certification

Matthew Katz
Bar #059147
29903 Harvester Road
Malibu, CA 90265
(310) 457-4844

Attorney for Plaintiff Matthew Katz

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF CALIFORNIA

IN RE NAPSTER, INC. COPYRIGHT LITIGATION MATTHEW KATZ (d.b.a. SAN FRANCISCO SOUND, AFTER YOU PUBLISHING CO., MALIBU RECORDS, MATTHEW KATZ PRODUCTIONS), Plaintiff, v. NAPSTER, INC., et alia, Defendants.	No. MDL-00-1369 MHP No. C-00-4725 MHP **(PROPOSED) ORDER GRANTING SUBSTITUTION OF ATTORNEY**

The requested Leave to make the Motion being granted, the Motion of Plaintiff Matthew Katz to substitute himself back as Pro Per in the above entitled action is HEREBY GRANTED. All papers filed by the Plaintiff shall indicate his appearance in *pro per*.

Dated: _____

_____
Hon. Marilyn Hall Patel,
U.S. District Judge

APPENDIX J

This calendar was last modified: 11/29/2004 09:14:00 AM

US District Court, Northern District of California
Judge Marilyn Hall Patel
Courtroom 15, 18th Floor
Tony Bowser

Monday 11/29/2004

09:00 AM	CR 04-0130 USA v. Jose Javier Lopez-Lopez (c)(Sp): Sentencing
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10:00 AM	CR 04-0284 USA v. Dara L Boyd (b); John E. Wood (b); Gina Marie Fabiano (b): Status Conference: Defendant Dara Boyd's Motion for leave to withdraw counsel
	---
10:00 AM	CR 04-0179 USA v. David Hamilton (b): Entry of Plea

11:00 AM	CR 04-0290 USA v. Jon Scott Chaussee (c): Trial Setting
	---
02:00 PM	C 04-3341 Shirley Rae Ellis v. CostCo Wholesale Corporation: Defendant's Motion to Transfer Venue
	---

03:00 PM C 04-1316 Deborah Manning v. GE Medical Systems:
Status Conference

03:00 PM C 04-3113 David Ayala et al v. Haden Blaylock et al:
Status Conference

03:00 PM C 04-2467 Claudia Adelman v. American Airlines:
Order to Show Cause

04:00 PM C 04-2983 James B. Goodman v. Infineon Technologies:
Case Management Conference

04:00 PM C 04-2116 Serajul Haque v. Fry's Electronics Inc:
Case Management Conference

Tuesday 11/30/2004

10:00 AM CR 040-0195 USA v. Melvin Glaspie (c):
Status Conference

02:00 PM CR 01-0344 USA v. Douglas Stepney (c): Kim Ellis (c):
Evidentiary Hearing re Defendant's Motion to Suppress

Monday 12/6/2004

09:00 AM CR 04-0227 USA v. Johnnie Nielson (b): Sentencing

09:00 AM CR 03-0367 USA v. Chad Littleton (c): CR 01-0344 USA v. Chad Littleton (c): Sentencing

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02:00 PM C 04-2902 Textainer Equipment Management LTD v. Blue Container Line SA: Plaintiff's Motion for Entry of Default Judgment

---

02:00 PM C 00-1976 USA v. Guy Seaton et al: Plaintiff's Motion for Partial Summary Judgment

---

02:00 PM C 04-4577 Mel F. Harold v. MBNA America Bank et al: Plaintiff's Motion to Vacate Arbitration Award

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03:00 PM C 04-3176 Steven Diverde v. Hartford Life and Accident Insurance Company: Status Conference

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04:00 PM C 04-1381 April Schneider et al v. City of Pacifica et al: Case Management Conference

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04:00 PM C 04-3720 USA v. $57,990 in US Currency: Case Management Conference

---

04:00 PM C 3101 Madan Lakhan Pal v. Donald Nuefeld:
Case Management Conference

Tuesday 12/7/2004

02:30 PM C 03-5665 Network Appliance Inc v. BlueArc Corporation:
Further hearing re Claims Construction

Wednesday 12/8/2004

02:30 PM CR 01-0344 USA v. Douglas Stepney et al:
Wiretap Motions
DEFENDANTS:
Douglas Stepney (c)(afd);
Kim Ellis (c)(cja);

Thursday 12/9/2004

02:30 PM C 04-1823 Ronnie Gene Bush v. J Solis et al:
Telephonic Status Conference

Monday 12/13/2004

09:00 AM CR 03-0284 USA v. Stephon Jones (c):
Sentencing

02:00 PM C 04-1225 Louis Brady v. Jean Silkirk et al:
Case Management Conference

02:00 PM C 04-2388 Hotel Employees et al v. Vista Inns Management:
Defendants' Motions to Dismiss

02:00 PM C 04-3294 Ray Klimasewski v. Antioch Middle School et al:
Defendant's Motion to Strike

03:00 PM C 02-0530 USA v. $16,235 in US Currency:
Status Conference

03:00 PM C 02-5358 Griselva Castaneda v. City of Oakland et al:
C 04-0315 Frank Morrow Jr v. City of Oakland et al:
Status Conference

03:00 PM CR 04-0317 USA v. Charles E Lepp (b);
Status Conference

03:00 PM C 04-3703 Irving Berg v. SBC IP Communications Inc:
Status Conference

04:00 PM C 04-1113 Ken Walters et al v. Rancho Murieta Country Club:
Case Management Conference

04:00 PM C 04-3274 Garden City Boxing Club v. Ambrosio Reyes Vigil et al:
Case Management Conference

04:00 PM C 04-3294 Ray Klimasewski v. Antioch Middle School et al:
Case Management Conference

04:00 PM C 04-3232 John Bowden Jr v. Thoractec Corporation:
Case Management Conference